

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PATRICIA A. LATHAM,
Plaintiff,

VS.

THE MINNESOTA LIFE INSURANCE
COMPANY,
Defendant.

Case No.: 05-CV-10294-RWZ

**AGREED MOTION TO CONTINUE DISCOVERY DEADLINE
AND PRE-TRIAL CONFERENCE**

Minnesota Life Insurance Company (“Minnesota Life”) by and through its attorneys, Cozen O’Connor, hereby moves this Court to extend the written discovery deadlines and pre-trial conference by 60 days, and in support thereof, states as follows, that:

1. Plaintiff filed this action on March 18, 2005 in the District Court Department of the Trial Court for the Commonwealth of Massachusetts, Lowell Division. which Minnesota Life removed to this Court.

2. Plaintiff's action seeks recovery of benefits under a life insurance policy issued by Minnesota Life to Stephen W. Latham. In addition to her claim for breach of contract, Plaintiff claims that Minnesota Life engaged in unfair settlement practices thereby violating Massachusetts consumer protection laws.

3. In response, Minnesota Life maintains that Mr. Latham made material misrepresentation in his application for insurance, thereby withholding pertinent medical information, the disclosure of which would have resulted in Minnesota Life's decision not to issue the subject policy.

4. The parties submitted a Joint Statement Pursuant to Local Rule 16.1, and the Court held a scheduling conference on April 19, 2005. After hearing the parties respective

positions at the scheduling conference, the Court deferred entry of a scheduling order. Rather, it set fact discovery cut-off of July 15, 2005 and scheduled a pre-trial conference for August 3, 2005. The Court noted that the pre-trial conference would be used to hear the status of the case and to set expert discovery and dispositive motion deadlines if necessary. The Court later extended the fact discovery cut-off by 60 days and continued the pre-trial conference to September 21, 2005.

5. Minnesota Life filed their Motion to Continue Discovery Deadline and Pre-Trial Conference on September 13, 2005. The Court granted Minnesota Life's Motion to Continue Discovery Deadline and Pre-Trial Conference. It was rescheduled for November 15, 2005.

6. As part of written discovery, Minnesota Life subpoenaed medical records from physicians and clinics who treated Mr. Latham but were not identified in his application for life insurance as required. Minnesota Life has been working diligently at obtaining the medical records for Stephen Latham.

7. On July 7, 2005, Minnesota Life issued a subpoena to Dr. Scott Henderson of Hawthorne Medical Associates. Upon receipt from opposing counsel, the Medical Authorization was forwarded to Hawthorne Medical Associates on September 7, 2005. The documents were received on September 15, 2005.

8. On July 7, 2005 Minnesota Life issued a subpoena individually to Dr. Michael Landzberg, Dr. Scott D. Solomon and Dr. Lori Tishler, all of Brigham and Women's Hospital. The subpoena, along with the Medical Authorization was re-issued to the records department of Brigham and Women's Hospital on September 7, 2005. An invoice was sent from the Hospital's Copy Services and payment was made by Minnesota Life on October 17, 2005. We have been informed that it will take 14-21 days after the payment has been processed before production of these voluminous documents (1,130 pages).

9. On September 22, 2005 Minnesota Life issued a subpoena to New England Rehabilitation Hospital. Upon receipt from opposing counsel, the Medical Authorization was forwarded to New England Rehabilitation Hospital on October 17, 2005. The director of Medical Records also requested a copy of the death certificate which was forwarded on October 17, 2005. Minnesota Life received an invoice for copy services on November 7, 2005 and expects the medical records soon.

10. On September 22, 2005 Minnesota Life issued a subpoena to Lahey Clinic. Upon receipt of the Medical Authorization from plaintiff, forwarded it to Lahey Clinic on October 17, 2005. Minnesota Life is following up on these records. A portion of these records were received on November 7, 2005.

11. While the subpoenaed physicians and clinics understand the necessity of producing the records in a timely fashion, they were not able to do so by the extended discovery cut-off date. In addition, without the relevant medical records, Minnesota Life cannot depose the necessary physicians.

12. Pending receipt and review of the outstanding subpoenaed medical records, as well as the information gleaned from other medical records provided during the claim investigation, Minnesota Life needs to take at least four depositions of physicians that treated Mr. Latham prior to the time he applied for insurance from Minnesota Life.

13. Minnesota Life continues to work with the subpoenaed physicians and clinics to obtain the relevant medical records and schedule their depositions as soon as possible. However, given the voluminous amount of medical records the process has been time consuming, and despite Minnesota Life's good faith effort to comply with the discovery cut-off, it has not had the opportunity to review the pertinent medical information or take key depositions.

14. Plaintiff has no objection to this motion.

WHEREFORE, Minnesota Life respectfully request this Court to extend the current fact discovery cut-off by 60 days and continue the pre-trial conference to a date following the extended fact discovery cut-off.

s/ Catherine A. T. Nelson

Catherine A.T. Nelson (6192953)
Leena Soni (6210129)
Attorneys for Defendant, Minnesota
Life Insurance Company
COZEN O'CONNOR
222 S. Riverside Plaza
Suite 1500
Chicago, IL 60606
Tel. (312) 382-3100
Fax. (312) 382-8910

BBO 600652
1900 Market Street
Philadelphia, PA 19103
Phone: (215) 665-2000
Fax: (215) 665-2013
E-Mail: JShea@Cozen.com

Catherine A.T. Nelson, Esq.
Leena Soni, Esq.
Of Counsel
Cozen O'Connor
222 South Riverside Plaza
Suite 1500
Chicago, IL 60606
(312) 382-3100
cnelson@cozen.com
lsoni@cozen.com

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing Motion to Continue Discovery Deadline and Pre-Trial Conference was served via electronic mail and facsimile on this 7th day of November, 2005 on the following counsel of record:

Marc R. Deshaies
BBO#550198
388 County Street
New Bedford, MA 02740
(508)996-8921

s/ Catherine A. T. Nelson
Catherine A.T. Nelson (6192953)
Leena Soni (6210129)
Attorneys for Defendant, Minnesota
Life Insurance Company
COZEN O'CONNOR
222 S. Riverside Plaza
Suite 1500
Chicago, IL 60606
Tel. (312) 382-3100
Fax. (312) 382-8910

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